

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MERIT CAPITAL GROUP, LLC,

Plaintiff,

- against -

**TRIO INDUSTRIES MANAGEMENT, LLC, TRIO
INDUSTRIES HOLDINGS, LLC, EVAN R. DANIELS,
and ROBERT E. GYEMANT,**

Defendants.

04 Civ. 7690 (RCC)

ORDER

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-30-04

RICHARD CONWAY CASEY, United States District Court Judge:

WHEREAS, Merit Capital Group, LLC ("Plaintiff") moves for a temporary restraining order and preliminary injunction against Trio Industries Management, LLC, Trio Industries Holdings, LLC, Evan R. Daniels, and Robert E. Gyemant ("Defendants"); and

WHEREAS, Federal Rule of Civil Procedure 65(a) requires that, before a preliminary injunction may issue, notice be given to the adverse party; and

WHEREAS, Federal Rule of Civil Procedure 65(b) requires that, before an ex parte temporary restraining order may issue, (1) it must be clear from specific facts set out in an affidavit or the verified complaint that "immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard," and (2) the applicant's attorney must certify in writing "the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required"; and

WHEREAS, Plaintiff has not given notice to Defendants and has failed to make it clear that Plaintiff would suffer immediate and irreparable harm;

It is ORDERED that Plaintiff's motion is **DENIED**, and a status conference is scheduled in this matter for December 17, 2004 at 9:30 AM in Courtroom 14C.

So Ordered: New York, New York
September 29, 2004



Richard Conway Casey, U.S.D.J.